(Testimony of Abraham Moncharsh.)

fulfillment or delivery of the articles described in this invoice? A. No.

Q. Did you ever see the invoice prior to coming into this courtroom? A. I have not.

Q. Did you participate physically in the preparation of that order? A. No.

Q. Did you give any direction to Mr. Berman or Mr. Goddard or any employee of the firm of Nye & Nissen in connection with filling that order?

A. I never even knew that we had an order like that.

Q. Did you give any direction to any person as to the manner or [3809] the words or any description to the preparation of the invoice which I have shown you relating to the Cape Cumberland?

A. No, sir.

Q. I show you, Mr. Moncharsh, two purchase orders of the Alaska Transportation Company, one relating to the James Oliver and the other relating to the Gilbert Hitchcock; the first is Exhibit 149 and the second is Exhibit 148, and I show you on the letterhead of Nye & Nissen an invoice relating to the James Oliver, U. S. Exhibit 147, and an invoice relating to the Gilbert Hitchcock, U. S. Exhibit No. 144, and I will ask you in reference to those two purchase orders and those two invoices whether or not those purchase orders were examined by you prior to the delivery of the merchandise referred to in the invoices?

A. They were not.

(Testimony of Abraham Moncharsh.)

Q. Were the invoices examined by you prior to their delivery to the shipping companies?

A. No, sir.

Q. Did you participate in the preparation or filling of those orders for the two ships mentioned, the James Oliver and the Gilbert Hitchcock in any manner? A. Absolutely not.

Q. Did you give any direction to Mr. Berman or Mr. Goddard, or any employee of Nye & Nissen, as to the manner in which those orders should be filled? A. No.

Q. Did you give any direction in respect to the manner in which that invoice was to be prepared?

A. No.

Q. Neither as to the description of the quantity, quality, or [3810] anything else of the merchandise?

A. No.

Q. Now, I show you an American-Hawaiian Steamship Company purchase order, U. S. Exhibit 150, and a Nye & Nissen billhead containing an invoice, U. S. Exhibit 151, each of which relates to the Czechoslovakia Victory, and I will ask you if that purchase order passed over your desk or was examined by you prior to the filling of the order? A. No, sir.

Q. Directing your attention to the invoice, which is the exhibit next following the purchase order, was that invoice prepared under your direction?

A. No.

Q. Was the order filled under your direction?

A. No.

(Testimony of Abraham Moncharsh.)

Q. Did you give any direction of any kind to Mr. Goddard or Mr. Berman as to the filling of the order represented by the purchase order and represented by that invoice? A. No.

Q. Do you know whether the merchandise that left the premises of Nye & Nissen was or was not correctly described in that invoice?

A. I didn't even know that we had an order like this, I couldn't tell you.

Q. I will show you U. S. Exhibit 153, which is an invoice, U. S. Exhibit No. 154, which is a purchase order, both of which relate to a ship called the Mission San Diego, and they came from the Deconhill Steamship Company, rather, the purchase order does, and I will ask you if that purchase order was examined by you prior to the delivery of the merchandise described either in the purchase order or the invoice? [3811]

A. I never saw them before.

Q. Did you ever see the invoice that is there in evidence? A. No, sir.

Q. Did you have anything to do with the preparation of that invoice? A. No.

Q. Did you see it before it went out with the delivery? A. No.

Q. Did you give any direction to Mr. Goddard or Mr. Berman in relation to the filling of that order? A. Absolutely not.

Q. Do you know whether the merchandise that left the firm of Nye & Nissen was correctly described in the purchase order?

(Testimony of Abraham Moncharsh.)

A. I don't know. [3812]

Q. Mr. Moncharsh, I show you a purchase order of the Olympic Steamship Company, U. S. Exhibit No. 160, and an invoice of Nye & Nissen, No. 161, relating to a ship called the Edmund Ross, and I will ask you if you ever saw the purchase order prior to the filling of the order represented by that invoice? A. I have not.

Q. Did you give any direction to any employee of Nye & Nissen or Mr. Goddard or Mr. Berman as to the filling of that invoice? A. I did not.

Q. Or, rather, as to filling the order represented by the purchase order? A. I did not.

Q. Did you select, prepare or participate in the selection of any merchandise that went to fill that order? A. No, sir.

Q. Did you give any directions to any person in relation to the preparation of the invoice?

A. I did not.

Q. Do you know whether the property described or the merchandise described in the invoice correctly describes the merchandise which left the premises of Nye & Nissen?

A. Does it describe?

Q. Whether the invoice correctly describes what went out of your store?

A. I would not know.

Q. You had nothing to do with the invoice, its preparation, or the filling of the order?

A. None whatsoever.

Q. I show you another invoice from the Olympic

(Testimony of Abraham Moncharsh.)

Steamship Company relating to the Heber Creel, U. S. Exhibit No. 163, [3813] and an invoice of the firm of Nye & Nissen, Exhibit 164, and I will ask you if you ever saw that purchase order prior to filling the order represented by the invoice dated May 12, 1944?

A. I never saw this purchase order before, and neither did I ever see this invoice before.

Q. Did you prepare or assist in preparing any of the merchandise that went to fill that order?

A. No, sir.

Q. Did you give any directions to Mr. Goddard or Mr. Berman how to fill that order?

A. I did not.

Q. Did you give any directions to any employee how to prepare the invoice that went to the shipping company? A. I did not.

Q. Do you know whether or not the invoice properly describes the merchandise which left the premises of Nye & Nissen as set forth in that invoice? A. I do not know.

Q. I will show you an invoice, or, rather, a purchase order of the Hammond Shipping Company, Limited, relating to the SS William A. Coulter, together with a Nye & Nissen billhead covering an invoice relating to the William Coulter? The purchase order is U. S. 168, the invoice is No. 169, and I will ask you if you ever saw the purchase order which I have just identified prior to filling the order?

(Testimony of Abraham Moncharsh.)

A. I never saw this before and I had nothing to do with it.

Q. Now, I direct your attention to the invoice. Did you give [3814] any directions to any person as to how that merchandise should be assembled for the purpose of delivery? A. No, sir.

Q. Did you give any directions of any kind, Mr. Moncharsh, as to what merchandise should go to fill that order? A. No, sir.

Q. Did you give any directions to any person as to how to prepare the invoice?

A. No, sir.

Q. Or how to describe the property?

A. No, sir.

Q. Do you know whether the description in the invoice is correct in relation to the merchandise which left the firm of Nye & Nissen——

A. I don't know.

Q. ——to fill that order?

A. I don't know.

Q. Now, Mr. Moncharsh, in connection with the series of ships which I have interrogated you on at times and asked you if you gave any directions to Mr. Berman or Mr. Goddard in relation to assembling merchandise for the purpose of filling those orders——

A. I absolutely did not.

Q. Do you recall? I will ask you in relation to those ships, starting with the William S. Clark and ending with the last ship just mentioned, whether you gave any directions to any other employee than

(Testimony of Abraham Moncharsh.)

Mr. Berman or Mr. Goddard as to what type of merchandise should go to fill the orders on those ships, whether it was butter, eggs or cheese?

A. I gave no instructions. I had no discussions with any employee in regards to these orders. In fact, I never knew [3815] that they were even in existence.

Q. Mr. Moncharsh, during that period of April and May of 1944, it appears from the testimony in this case that a series of orders were filled by the firm of Nye & Nissen for a number of boats, fifteen in number, and I will ask you if you know or have any accurate information on the number of ships in addition to those fifteen which, as a matter of daily routine, were receiving from the firm of Nye & Nissen merchandise?

A. In that particular period of time?

Q. During that period of time, the period from the 24th of April until the 13th of May?

A. Conservatively, one hundred deliveries or more.

Q. During the period of time, Mr. Moncharsh, in the months of April and May of 1944, or any month of April and May, in your packing plant or in any packing plant in California, is the quality of eggs in the packing plant such as yours a high quality at that particular time of the year?

A. Nothing but high quality of eggs during that particular period of time.

Q. Mr. Moncharsh, directing your attention to the fact that in each of these ships which I have

(Testimony of Abraham Moncharsh.)

referred to, with the possible exception of the Hawaiian Shipper, all of those orders that you saw and observed on the witness stand called for Medium eggs, and I will ask you what relationship in quantity the Medium eggs bore to Large eggs in your dealings in that [3816] period, if you know?

A. Between twenty and twenty-five per cent.

Q. In the matter of the filling of these particular orders in relation to those particular boats in the months of April and May of 1944, the fifteen that you have mentioned, and your statement that you feel that there were at least one hundred more, did you receive or did there come to your attention during the period of April 24 until May 13, any complaint of any kind, character or description from any steamship company in relation to the delivery of merchandise between April 24 and May 13?

A. I do not ever remember a complaint from a steamship company with the exception of the William S. Clark.

Q. Well, you mean of those that I showed you?

A. That is true.

Q. But I am talking, Mr. Moncharsh, about the period between April 24 and May 13; there has been shown to you certain invoices relating to the delivery to fifteen ships during that period.

A. That is right.

Q. Including those fifteen ships, and adding to it the one hundred or more deliveries made during that same period, did you receive any complaint from this shipping company for any of that one

(Testimony of Abraham Moncharsh.)

hundred and fifteen deliveries between April 24, 1944, and May 13?

A. Not a single complaint from any steamship company. I would like to add there was no complaint [3817] on eggs, butter or cheese or anything else which we may have delivered.

Q. During the period of time, Mr. Moncharsh, covered by this indictment, or, rather, during the period of 1944, I will ask you if, in connection with the conduct of your business you were dealing in large quantities with the United States Army in respect to the delivery of eggs?

A. I didn't get that.

Q. In the year 1944 were you making large deliveries of eggs to the United States Army?

A. Yes.

Q. Were those deliveries covered by a contract?

A. All of them.

Q. I will ask you if it was the general practice prevailing in respect to deliveries to the United States Army for the United States Army to accept eggs at the port of delivery a grade lower than at the point of origin? A. Yes, sir.

Q. Was that practice which was in existence in the year 1944 in relation to accepting at the point of delivery eggs of a lower grade than that arrived at at the point of origin confined exclusively to Procurement grades? A. That is correct.

Q. Did it cover Consumer grades and Procurement grades? A. It covered both.

Q. Now, I will show you a purchase order relat-

(Testimony of Abraham Moncharsh.)

ing to the purchase of eggs, which I have selected out of the month of April, 1944, and ask you to look at it? A. Yes, sir. [3818]

Mr. Faulkner: Before I ask about that I would like to talk to Mr. Pratt.

Q. Mr. Moncharsh, what is this document?

A. This is a purchase order that we received from the Quartermaster Marketing Center, 248 Battery Street, in San Francisco, for 18,000 dozen Grade AA Large to weigh 44 pounds net minimum per case.

Q. I do not want all that detail. That is a United States purchase order of the War Department, is that correct?

A. This is a War Department order.

Q. From what place to what place are those eggs represented by that purchase order to be delivered?

A. From San Francisco to the Consumers Ice and Cold Storage Company, Sacramento, California.

Mr. Faulkner: I offer this in evidence, your Honor.

The Court: It may be admitted and marked.

(The document in question was thereupon received in evidence and marked Defendants' Exhibit EA.)

Mr. Faulkner: Q. In respect to this exhibit, which has just been received in evidence, EA, the quality of the eggs called for in this purchase order is Fresh, Processed, Consumer Grade AA, isn't that correct? A. That is correct.

(Testimony of Abraham Moncharsh.)

Q. Now, the contract further provides, does it not, "The eggs covered by this purchase order are for storage and therefore must have official inspection at point of origin. They will be accepted on the date—" something is crossed out—"they [3819] will be accepted on the basis of Veterinary Inspection not to grade lower than Consumer Grade A."

Was that a normal provision in contracts of that type at that time?

A. That is correct. Every contract carried that for the same grade.

Q. Now, I show you a purchase order in January of 1944, and ask you if that is a purchase order from the War Department to Nye & Nissen in respect to eggs? A. Yes, it is.

Mr. Faulkner: I want to show that to Mr. Pratt. I offer this in evidence, if your Honor please.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked Defendants' Exhibit EB.)

Mr. Faulkner: Q. From what place to what place were the eggs to be delivered represented by this purchase order dated January 31, 1944, and now marked Defendants' Exhibit EB?

A. From Nye & Nissen, Petaluma.

Q. To what place?

A. To the National Ice and Cold Storage Company, Petaluma, California, which is about a block and a half away from the plant.

Q. In that particular purchase order I will ask you if it represents a carload lot of eggs?

(Testimony of Abraham Moncharsh.)

A. It represents 12,000 dozen.

Q. Is that a carload lot?

A. No. And they were delivered in small quantities as follows: February 10, 1944, [3820] 114 cases, February 11, 1944, 77 cases, on February 12, 1944, 99 cases, on February 29, 1944, 110 cases, which totals up to 400 cases or 12,000 dozen.

Q. In that contract is there a provision describing the quality of the eggs called for in the purchase order? A. That is right.

Q. And how is it described?

A. Consumer Grade AA Large.

Q. Is that what the purchase order called for?

A. That is what the purchase order called for.

Q. Is there a provision in that contract in relation to the quality that will be accepted by the United States Army at the point of delivery?

A. One grade lower, which is Grade A.

Q. Pardon me?

A. One grade lower, which is Grade A, at point of delivery.

Q. Is that covered by this language in the contract: "The eggs covered by this purchase order are for storage and therefore must have official inspection at point of origin. They will be accepted at the storage point on the basis of Veterinary inspection not to grade lower than Procurement Grade A." Is that right? A. That is correct.

Q. Now, you will observe, Mr. Moncharsh, that the original order called for U. S. Consumer Grade

(Testimony of Abraham Moncharsh.)

AA and at the delivery point the reference is to a Procurement Grade A egg?

A. Consumer Grade A. [3821]

Q. Well, it happens that it says Procurement Grade? A. Well, that is an error.

Q. In other words, there is no Procurement Grade A, is that correct?

A. No. They should have crossed this word "Procurement" out and substituted "Consumer."

Q. Procurement Grade 1 and Procurement Grades come in figures, isn't that correct, and Consumer grades in letters? A. That is correct.

Q. Consumer Grade A is the equivalent under the Department of Agriculture rules to Procurement Grade 1, isn't that correct?

A. That is correct. [3822]

Mr. Faulkner: What is your Honor's pleasure?

The Court: Could you indicate how much further time you desire?

Mr. Faulkner: Not much. In other words, what I want to do with these, although I will try to cut some of them down, I want to cover each point.

The Court: The thing I am going to inquire about now is this: The question has been asked by the jury to me from time to time how long this case will take. Of course, I have answered by telling them they knew as much about that as I did. I didn't know. Now I am going to ask both sides to indicate how many witnesses they expect to call. I will ask you how many witnesses you expect to call.

Mr. Faulkner: I expect to call, your Honor—by

(Testimony of Abraham Moncharsh.)

witnesses I mean witnesses who will testify at any length—two more witnesses. Now, depending on my success in certain quarters to overcome certain situations which I won't discuss, I may bring some short witnesses, witnesses such as the man who came up from the Harbor Commission.

The Court: Can you approximate the time?

Mr. Faulkner: I would think, your Honor, that we would finish our case somewhere on Thursday. Now, that is as close as I would come. Of course, I am anticipating I will very shortly finish with Mr. Moncharsh.

The Court: How long do you think it will take you with [3823] Mr. Moncharsh?

Mr. Faulkner: I do not think more than half an hour, your Honor. It takes a long time to go through these records. I apologize to the court. But you understand the position——

The Court: I will ask the Government to indicate how long they expect to take.

Mr. Pratt: The Government's rebuttal will take not more than an hour or two at the outside.

Mr. Faulkner: We should finish the evidence, your Honor, next week, then, if that is true.

The Court: It is my hope we will be able to conclude this case during the coming week.

Mr. Faulkner: We are defending, your Honor, on the basis of one day against one week. That has been the ratio of our participation.

The Court: You cannot determine a ratio under the circumstances existing here. The only thing I

(Testimony of Abraham Moncharsh.)

am trying to ascertain, so the jury may be advised—they have been anxious about it, themselves and I—who is in no position to tell them how much time you would take since I did not know, and I did not know what each side expected to do—my purpose was mostly to acquaint the jury, for there is one of the jurors here who expected to go to Mexico on a trip, whom we had to disappoint—he couldn't go—and he has another appointment now, and he wishes to be advised on the matter. That is the reason I inquired now as to what [3824] time it will take. Can we determine that this case can be disposed of before the week is over, so that he can make arrangements accordingly?

Mr. Faulkner: Well, that would be just hazarding a guess, your Honor.

The Court: Well, if we get through on Thursday, for example, there is no reason why we could not conclude during the coming week, is there?

Mr. Faulkner: I do not know how long counsel for the Government wants to argue this case.

The Court: I will determine that when the time comes after the evidence is in in this case. I will determine that. I will have no difficulty in doing it.

Mr. Faulkner: Would your Honor indicate now how much time we will be permitted to have?

The Court: The best answer to that is, how much time do you think you want to consume?

Mr. Faulkner: Just as little as possible, and your Honor knows that that is my desire.

The Court: Fix the time.

(Testimony of Abraham Monchar[illegible].)

Mr. Faulkner: Suppose Mr. Pratt and I discuss that and try to indicate something that will be agreeable?

The Court: I am not concerned about Mr. Pratt. You asked me: Now, what time do you wish?

Mr. Faulkner: If the Government divides their time——[3825]

The Court: I will control the Government's time on the time that you set.

Mr. Faulkner: I would like to state to the court that if the Government equally divides whatever time is allotted to them, I think between two and three hours would be the maximum time we would ask for.

The Court: Is that agreeable to the Government?

Mr. Pratt: Yes, your Honor.

The Court: And then you can divide three hours between both sides. Assuming we will take up Thursday, we may be able to dispose of the matter on Wednesday.

Mr. Faulkner: I do not think so, your Honor.

The Court: I do not know. I am just trying to fix the time. Ladies and gentlemen, before you leave I desire again to admonish you that you are not to converse either among yourselves or with anyone else concerning this trial. You are not to permit anyone to address you concerning it, nor to form or express an opinion until the matter is finally submitted to you.

(Testimony of Abraham Moncharsh.)

(Thereupon the jury retired from the court room.)

Mr. Faulkner: Did your Honor understand that we desired to divide the three hours between us?

The Court: Yes.

Mr. Faulkner: I meant three hours for each side. We could not argue this case in an hour and a half, Judge. [3826]

The Court: You were trying to involve me with the other side. I will tell the Government what to do when you indicate your time.

Mr. Faulkner: I indicated three hours.

The Court: That you wanted three hours?

Mr. Faulkner: Not to exceed three hours.

The Court: All right, then. Of course, it follows that the Government's time will be three hours.

Mr. Faulkner: Yes, your Honor.

The Court: This jury has been impatient, but, with it all, has displayed considerable patience too. I am not, of course, prepared to discuss at this time the matter, but it was with the hope that they would know that I brought up the subject. In fact, two or three of them have been trying to get away. I did not know. I frankly told them. They probably thought I was trifling with them. I do not know what they thought. I thought the best way was to develop the matter in front of them so there would be no question about it. If you can get through here by Wednesday, I am satisfied with the preparation that you can make during the recess here that you

(Testimony of Abraham Moncharsh.)

will have no difficulty in doing that, and conclude, if possible, on Wednesday. You can argue six hours, three on each side.

Mr. Faulkner: I think we have moved very fast with our defense, your Honor.

The Court: The answer to that is your defense is mostly [3827] leveled at the cross examination of these witnesses, so that you must be responsible for that time taken, so both sides are in an equal position, if there is anything equal.

Mr. Faulkner: I am not talking about being equal; I am talking about the problem of being expeditious.

The Court: Far be it from me to take any time to criticize you as to the manner in which you try your case. I have been hereabouts too long, and if there was any reason for criticizing you, I would have no hesitancy in doing it. I think you know that.

Mr. Faulkner: I know that.

The Court: You do not give me that opportunity. You have the capacity that few men possess to try a good case. I know that. I am not entering into any controversy with you about it.

Mr. Pratt: I think that statement should be transcribed and illuminated and presented to Mr. Faulkner.

(Further discussion between court and counsel, after which an adjournment was taken until Tuesday, April 2, 1946, at 10:00 o'clock a.m.) [3828]

Tuesday, April 2, 1946, 10:00 o'clock a.m.)

The Clerk: United States vs. Nye & Nissen, on trial.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and in the box.

ABRAHAM MONCHARSH,

recalled.

Direct Examination (Resumed)

Mr. Pratt: Mr. Faulkner asked the Government to produce whatever orders there were of the War Shipping Administration relative to the requirement of inspection and weighing of ship's stores at the waterfront. We have produced the only order which we are advised was ever issued on this subject, and it was issued on October 5, 1945, which is beyond the time of this case and we are advised that no other order on that subject was published or issued.

Mr. Faulkner: Well, may I ask through the court who has charge of these? In other words, I am aware of this. This provides for weighing and sealing as of October. Was there not an order before that?

Mr. Pratt: We are advised that there was no order previous to that. We were advised by Mr. Schumack, of the Food Control Division of the War Shipping Administration, who is here in San Francisco.

(Testimony of Abraham Moncharsh.)

Mr. Faulkner: Well, we will mark this for identification. [3829]

(The order was marked Defendants' Exhibit EC for identification.)

Mr. Faulkner: Q. Mr. Moncharsh, on adjournment on Friday we had identified certain contracts, purchase orders of the War Department during the years 1939, 1940, 1941 and 1942. Which you were at the plant on Townsend Street did you ever give any direction to Mr. Goddard or to any employee of Nye & Nissen to prepare sample cases, special cases of eggs to be mingled with a lot of eggs in order that sample cases would be selected by any inspector, whether of the Department of Agriculture or the Veterinary Corps?

A. Absolutely not.

Q. I think you testified on Friday, Mr. Moncharsh, that in the packing plants that the women candlers take the receipts of eggs from the ranchers and they grade eggs into as high as 25 separate grades of eggs. I will ask you if there is a grade of eggs known in the industry as a "Cutout"?

A. There is not such a grade by specific name; however, I have heard in a casual way the word "cutout" used.

Q. That is why I want to know. In other words, when you have heard the expression used in relation to the packing of eggs as distinguished from other things, in the candling of eggs what is your understanding of the meaning of that word?

A. There is really no understanding. It may

(Testimony of Abraham Moncharsh.)

meat, for example, if they are candling Grade AA eggs a Grade A may be called, or may be under grade, which is really not a correct name to use.

Q. Have you seen the expression used where any grade lower than the highest grade that you are candling to, then that grade is really known as a "Cutout"? A. Never.

Q. In connection with the considerable quantities of eggs that were sold in the years 1938, 1939 and 1940, and during the period covered by this indictment, to the Veterinary Corps, or other agencies or purchasers who required a Department of Agriculture inspection, did all of those eggs pass through your plant on Townsend Street?

A. A very, very small percentage.

Q. The larger quantity came from your own packing plants, is that correct?

A. That is correct.

Q. Were there other eggs that were purchased by your firm during that period from other sources where the eggs never touched either your packing plant or your place of business in Townsend Street?

A. We purchased and we received many carloads of eggs already candled and crated from the State of Minnesota, from Chicago, many other states. When these cars arrived, say we had a special order, we asked the Army inspectors or the Department of Agriculture inspectors to go down to the car and draw a number of cases which they wished, and the driver would hoist them on the truck and bring them up to the store, and they candled them, and

(Testimony of Abraham Moncharsh.)

placed a grade on them. Whatever grade they placed on them we sold them to the Governmental agency on that basis. [3831]

Q. In other words, the lot of the eggs, the carload of the eggs would never be unloaded into your plant of Nye & Nissen? A. That is correct.

Q. In the course of your business in the years covered by this indictment, 1938 to 1944, in relation to eggs that had been inspected either by the Department of Agriculture or the Veterinary Corps in your place of business, that is, Nye & Nissen's place of business on Townsend Street, to whom did the eggs belong, Mr. Moncharsh, until final delivery?

A. They always belonged to Nye & Nissen until final delivery was made and paid for, and even after that if there was any complaint we made it good.

Q. In relation to the quantity of eggs, Mr. Moncharsh, that were inspected either by the Veterinary Corps or the Department of Agriculture, where at the time of the inspection it was an intention to use eggs for a particular purpose, have you on many occasions, or have you at all ever used those eggs for other purposes?

A. We have many times, and we reported same to the various inspection officers.

Q. Then what would happen?

A. And whenever we had sufficient supply of eggs or additional eggs we called him for further inspection.

(Testimony of Abraham Moncharsh.)

Q. And then was the quantity used for some other purpose? A. Yes.

Q. There has been considerable evidence, Mr. Moncharsh, in [3832] relation to a series of transactions in April and May of 1944 relating to the shipments to certain ships to the waterfront, which I went through on the examination on Friday. Were you in San Francisco during the entire period of time from April 24th to May 15th?

A. I was not.

Q. Were you away part of the time?

A. I was.

Q. Where were you?

A. I was at Tacoma and Salt Lake City.

Q. Do you recall when?

A. I believe that I checked into the hotel, one of the Tacoma hotels, on May 5th and checked out on May 9th.

Q. Was that in Tacoma or Utah?

A. That was in Utah, that is correct.

Q. Mr. Moncharsh, I show you this bill of the Utah Hotel at Salt Lake City, and ask if that was the bill you paid in relation to your presence in Utah? A. Yes, I paid this bill on May 9th.

Q. When did you enter the hotel?

A. On May 7th.

Q. Do you recall where you started from when you went to Utah? A. Tacoma.

Q. How did you go to Tacoma?

A. By plane.

(Testimony of Abraham Moncharsh.)

Q. Do you recall how you went to Tacoma from San Francisco? A. By plane.

Q. I will show you this and ask you if you received that as a verification of the exact time you were in the hotel at Tacoma?

A. Yes, I asked for that. This is what I received. [3833]

Q. What date did you register in the hotel in Tacoma? A. On May 5, 1944.

Mr. Faulkner: I offer these two papers in evidence, your Honor.

The Court: Admitted and marked.

(The documents were marked Defendants' Exhibit ED.)

Mr. Faulkner: Q. Do you recall when you went to Utah—when did you return to San Francisco, do you recall?

A. I believe on May 13.

Q. Do you recall what day you left San Francisco to go to Tacoma by plane?

A. On May 4th.

Q. On the night plane on May 4th?

A. Yes.

Q. You gave testimony here on your examination on Friday, Mr. Moncharsh, in relation to the sale to the Army under bids where Standards would be sold at prices lower than Extras. I show for illustration a series of invoices of Nye & Nissen in the month of February and ask you if you recognize them as part of the original records of the firm of Nye & Nissen? A. That is correct.

(Testimony of Abraham Moncharsh.)

Q. In whose handwriting are they?

A. I believe they are Mr. Goddard's.

Mr. Faulkner: I offer these four documents in evidence.

The Court: Admitted and marked.

(The documents were marked Defendants' Exhibits EF-1, -2, -3, and -4, in evidence.)

Mr. Faulkner: Q. Now, Mr. Moncharsh, I show you here part of Exhibit EF—EF-1, an invoice showing the sale of 37 cases of Specials for the price of .2473. That represents .2473 a dozen?

A. 24¾ cents a dozen, a fraction less than 24¾.

Q. The date of that invoice, I think, was February 4, 1941. On the same day, February 4, 1941, I show you an invoice showing the sale of 400 cases of specials for .2628. A. That is correct.

Q. Now, I see that on that particular day, for illustration, you were selling to the United States Army the same grade of eggs at prices that had a differential of almost 2 cents; is that correct?

A. A cent and a half.

Q. A cent and a half. On February 6, 1941, I show you an order for 15 cases, an invoice, of Standard eggs, for .2487, and the same day——

A. That is correct.

Q. (Continuing): I show you an order for 300 cases of eggs, Standards, for .2587.

A. That is also correct.

Q. I direct your attention, Mr. Moncharsh, to the fact that the two orders for Standards on February 6, one for .2487 and one for .2587, that is

(Testimony of Abraham Moncharsh.)

24⅛ and 25⅞, that the prices for which those eggs were billed are both in excess of the price at which you were selling Special eggs two days before, which special eggs are two grades higher. How does that come about, in your business, Mr. Moncharsh?

A. That is due to the fluctuating markets from hour to hour. The supply and demand varies [3835] these values.

Q. I direct your attention to those invoices, and I will ask you if it is not correct that each invoice is on a separate purchase order?

A. That is correct, yes.

Q. The purchase order represents, does it not, a contract upon which a bid at an agreed price had been entered? A. Yes.

Q. The same day in respect to Standards I notice that there is a delivery of 15 cases of Standards at, I think, a 24-cent figure. A. .2487.

Q. That same day there is a larger quantity of Standards at an agreed price. What is the reason for the difference in the prices of the Standard eggs, Mr. Moncharsh? A. Greater demand.

Q. Pardon me? A. Greater demand.

Q. Is there any relation to quantity?

A. Yes, larger quantity and naturally—we never have large quantities of Standards. There are here fifteen cases, we probably could have had fifteen cases of Standards; but 300 cases of Standards we could never have, and naturally we had to deliver a good portion of Extras.

(Testimony of Abraham Moncharsh.)

Q. Pardon?

A. A large portion of Extras. However, we billed them out as Standards because the contract calls for Standards.

Q. In the month of February—these went out in the month of February, did they not?

A. February 6, 1941.

Q. During the period from February until the 1st of June it is [3836] true, is it not, in each of the years mentioned in this indictment, including the year 1944, eggs are plentiful, are they not?

A. That is correct.

Q. By eggs being plentiful, I mean fresh eggs.

A. They are, and they are of the highest quality.

Q. You have seen some exhibits in evidence here in which a purple letter "P" appears on some labels. To your knowledge and from your experience in the packing plants, what does the letter "P" represent?

A. For "Processed," we used that letter "P" for Processed to distinguish that the eggs are processed when we are packing some eggs that are not processed of the same grade or the same size.

Q. As a general practice, during the years 1942, 1943, 1944, what percentage of the eggs that passed through your plant were processed?

A. Between 85 and 90 per cent.

Q. When eggs are processed, when a continual operation of processing is in existence in your plant, is any designating mark put on the cases indicating whether they are or are not processed?

(Testimony of Abraham Moncharsh.)

A. When all the eggs are processed there is no need for a name, designating mark.

Q. In other words, the letter "P" appears when a plant is doing both, shipping both? A. Yes.

Q. In the same shipment? A. Yes.

Mr. Faulkner: That is all, Mr. Moncharsh. Just a moment. Will your Honor indulge me just one minute? I would like [3837] to show—may I show to the jury, your Honor, the exhibits introduced as part of the examination of Mr. Moncharsh which they have not yet seen?

The Court: You may.

Mr. Faulkner: In one corner, in the interest of time, I will hand the juror all of Exhibit EE, showing the different prices of Standards and Special eggs, and also the Tacoma Hotel record and the Utah Hotel record, relating to the presence of Mr. Moncharsh.

I will show to the juror in the No. 1 seat, your Honor, so they may be passed, these two purchase orders. The part I wish to indicate to the juror is the grade of eggs called for on the first sheet in the order and the grade acceptable is called for on the second sheet, both exhibits. [3838]

Cross Examination

Mr. Pratt: Q. Mr. Moncharsh, you stated that this corporation, Nye & Nissen, was organized some time ago, I think. How old is that corporation?

A. To be exact—I heard that mentioned last night—forty-nine years.

(Testimony of Abraham Moncharsh.)

Q. And how long have you been connected with the corporation? A. Since 1921.

Q. You and your partner, Mr. Baum, bought into the corporation in 1921, is that it?

A. No.

Mr. Faulkner: I do not think that is quite right, Mr. Pratt. You can have that exactly.

Mr. Pratt: About when was it?

A. Baum and Moncharsh took over the corporation in October of 1921.

Q. And acquired all of the stock?

A. Not quite at that time.

Q. But you do own it all now; you and Mr. Baum, do you? A. That is not——

Q. What is it? A. That is not right.

Q. With the exception of one or two qualifying shares to directors?

A. It still is not correct.

The Court: Q. What is the fact?

The Witness: A. The fact is that Baum and Moncharsh owned the corporation, and up to December 1945 there were in existence three partners, Mr. Baum, myself, and my mother. My [3839] mother passed away on December 10, 1945.

Mr. Pratt: Q. So that all the stock was owned by the three of you until the time of her death?

A. That is correct.

Q. Who are Nye & Nissen?

Mr. Faulkner: I do not think that is correct either. In other words, I think when the firm bought Nye & Nissen in 1921 there were other

(Testimony of Abraham Moncharsh.)

personalities that owned the firm of Baum and Moncharsh. Mr. Moncharsh knows them but the distinction in time is there. I think there were people who died in the meantime.

Mr. Pratt: Q. Who is Mr. Nye?

A. He has passed away. Mr. Nye passed away in 1921.

Q. And Mr. Nissen?

A. He has passed away long, long before I ever knew him.

Q. So that there are no persons by the name of Nye or Nissen living and have not been for a good many years connected with this concern, is that right? A. That is correct.

Q. And ever since you took over in 1921 have you been the president of the company, Mr. Moncharsh? A. Yes.

Q. And in charge of its affairs as perhaps general manager?

A. As an official of the company, as president of the company.

Q. And as president of the company you have been in charge of all its activties, is that right?

A. Well, in an official capacity.

Q. In an official capacity? A. Yes. [3840]

Q. Now, you are an expert, are you not, in connection with the quality of eggs?

A. Well, I have been in the egg business, handling eggs, since I was a little boy, with the exception that I spent three years with the Army in France.

(Testimony of Abraham Moncharsh.)

Q. In the first World War?

A. That is correct, and when I came back I went back into the egg business.

Q. You are an expert, are you not?

A. I really can't tell you.

Q. You do not know. Well, you are a judge of the quality of eggs, are you not?

A. I could judge the quality of eggs, yes.

Q. And if occasion required you could candle eggs, couldn't you? A. No, sir.

Q. Didn't you ever candle eggs? A. No.

Q. Aren't you able to hold eggs before a candling light and determine their quality?

A. There is a bit difference between merely determining the quality and candling eggs.

Q. Are you able to determine the quality of eggs by holding them before a candling light?

A. A few, yes.

Q. A few, but not many, is that it?

A. That is correct.

Q. Are you also an expert in cheese?

A. No, sir.

Q. Or butter? A. No.

Q. Your concern manufactures considerable quantities of cheese, does it not?

A. No, I wouldn't say—small quantities of cheese. [3841]

Q. Under your direction? A. No, sir.

Q. As head of the company?

A. Only in an official capacity.

Q. Only in an official capacity, yes. Now, as

(Testimony of Abraham Moncharsh.)

president of the company you determine the policies of the company and its affairs, do you not?

A. To a certain extent.

Q. To what extent?

A. If I am called in to decide on problems I help them.

Q. You are acquainted with what is going on in your business all the time, aren't you?

A. To a certain extent.

Q. As president of the company?

A. That is correct, only to a certain extent. I can't watch every employee. I do not know what each employee is doing every minute of the day or even the major.

Q. But you control the policy of the company in its business, do you not?

A. I would say to a certain extent.

Q. Who else has charge of the policy of the company, Mr. Moncharsh?

Mr. Faulkner: You do not let him finish, Mr. Pratt.

Mr. Pratt: I am sorry.

The Witness: We may have many, many problems come up during the day and they would not all come to me.

Mr. Pratt: Q. I understand, but the overall policy of the company is in your charge as president, is it not?

A. It depends. If it is important enough it is called to my [3842] attention. If it is not important it is never called to my attention.

(Testimony of Abraham Moncharsh.)

Q. The overall policies of the company and the condition of its business are in your hands, are they not?

A. You will have to be more specific what you mean by overall and the conduct of the business. I don't know what you mean.

Q. Who does the hiring of employees of your company?

A. Each man is in charge of a specific department.

Q. When you say each man whom do you mean?

A. Well, there are plant managers——

Q. Let us confine it to San Francisco?

A. Okeh.

Q. Who does the hiring here in your local plant and in your office? A. Mr. Eichler.

Q. Mr. Eichler? A. That is right.

Q. Mr. Eichler is your brother-in-law, is he not?

A. That is correct.

Q. And has been there in charge of your office, is that right? A. That is correct.

Q. He is the accountant in charge of the books of account, is he not?

A. He is the office manager.

Q. And he has been in that capacity for a long time? A. That is correct.

Q. How many years?

A. Oh, I would say, over fifteen years.

Q. Fifteen years, and he hires and fires the girls and [3843] employees in the office, is that right? A. That is correct.

(Testimony of Abraham Moncharsh.)

Q. And who hired Mr. Eichler?

A. My father, who has passed away a long, long time ago.

Q. Was your father one of the owners of this company? A. Yes.

Q. When did he pass away?

A. Nineteen years ago.

Q. But you were the president before that, were you not? A. That is correct.

Q. And your father occupied what positon?

A. Well, I believe that he was a director.

Q. A director, but you were the president?

A. That is correct.

Q. Now, Mr. Baum lives in New York, doesn't he? A. Yes.

Q. What is his first name?

A. Abraham Baum.

Q. Abraham Baum, and he lives in New York still, does he not? A. That is right.

Q. And has been there during all the course of your partnership?

A. Yes, with the exception that he used to come out here once or twice a year.

Q. Does he still come out here on occasion?

A. Yes.

Q. And you have a New York office, have you not? A. Yes.

Q. Of Baum and Moncharsh?

A. That is right.

Q. And also of Nye & Nissen, do you not?

A. No.

(Testimony of Abraham Moncharsh.)

Q. You say that your father hired Mr. Eichler?

A. That is correct.

Q. Mr. Eichler married your sister?

A. Yes. [3844]

Q. So your father employed his son-in-law, Mr. Eichler, as the accounting officer, is that right?

A. As the office manager. We had an accountant besides.

Q. And he has remained in that position ever since? A. That is right.

Q. And acts under your direction as president, does he not? A. To a certain extent.

Q. Well, you are his superior, of course, are you not, as president? A. That is right.

Q. And if you wanted to you could overrule anything that he proposed, couldn't you?

A. That is right.

Q. Down in your plant you have Mr. Berman. Mr. Berman is your brother-in-law, too, isn't he?

A. That is right, by marriage.

Q. And who hired Mr. Berman?

Mr. Faulkner: I think you have these relations mixed up. I do not know that Mr. Berman is his brother-in-law. I think you had better find out what the relationship is.

Mr. Pratt: I do not know perhaps what a brother-in-law is.

Mr. Faulkner: I am confused myself.

Mr. Pratt: Q. Mrs. Berman and your wife are sisters, is that right?

A. Mrs. Berman and my wife are sisters.